

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ENCOMPASS INSURANCE COMPANY OF
MASSACHUSETTS,

CIVIL ACTION NO.: 05-11693 RCL

Plaintiff,

vs.

JOSEPH D. GIAMPA, FREDERICK T.
GIAMPA, ADVANCED SPINE CENTERS,
INC. d/b/a FIRST SPINE REHAB, FUTURE
MANAGEMENT CORPORATION,
EDWARD KENNEDY, BRIAN J.
CULLINEY, D.C. AND JENNIFER
McCONNELL, D.C.

Defendants.

**ASSENTED TO MOTION FOR LEAVE TO FILE SINGLE OPPOSITION AND
MEMORANDUM OF REASONS IN SUPPORT OF OPPOSITION IN EXCESS
OF TWENTY (20) PAGES TO DEFENDANTS' MOTIONS TO DISMISS**

I. INTRODUCTION

Now comes the plaintiff, Encompass Insurance Company (hereinafter
“Encompass”) and respectfully requests leave of the Court to file a single Opposition and
Memorandum of Reasons in Support of Opposition to:

(1) the motions to dismiss filed on October 18, 2005 by defendants, Joseph D.
Giampa, Frederick T. Giampa, Advanced Spine Centers, Inc. d/b/a First Spine Rehab,
and Future Management Corporation, and Edward Kennedy; and

(2) the motion to dismiss to be filed by Brian Culliney and Jennifer McConnell
no later than November 1, 2005;

in excess of the twenty (20) page limit set pursuant to Local Rule 7.1(B)(4). The parties
have simultaneously filed a STIPULATION regarding the filing dates and briefing
schedule of defendants’ motions to dismiss and Encompass’s opposition.

II. BACKGROUND AND RELEVANT PROCEDURAL HISTORY

On August 16, 2005, Encompass filed its Complaint, alleging that the defendants Joseph D. Giampa, Frederick T. Giampa, Advanced Spine Centers, Inc. d/b/a First Spine Rehab, and Future Management Corporation, Edward Kennedy, Brian Culliney and Jennifer McConnell, engaged in a scheme to defraud Encompass by creating and submitting false medical documentation in connection with the alleged medical treatment of Encompass claimants. Encompass filed its First Amended Complaint on September 30, 2005.

On October 6, 2005, Joseph D. Giampa, Frederick T. Giampa, Advanced Spine Centers, Inc. d/b/a First Spine Rehab, Future Management Corporation and Edward Kennedy filed a Joint Motion to Dismiss in which they raised five (5) substantive arguments. Defendants Brian Culliney and Jennifer McConnell will file no later than November 1, 2005, their motion to dismiss.

III. REASONS IN SUPPORT OF THIS REQUEST OF EXTENSION

For the reasons outlined below, Encompass respectfully requests that the Court grant Encompass leave to file a single opposition and memorandum in excess of the 20 page limit imposed by Local Rule 7.1(B)(4):

- the issues raised by Encompass in its Complaint and the issues raised (and expected to be raised) by defendants in their motions to dismiss are legally and factually complex;
- each of the issues raised requires legal analysis and is factually driven, requiring citation to and explanation of the factual support for Encompass's claims;

- the requested enlargement will promote judicial economy by permitting Encompass to address, clarify and/or refute erroneous, factual legal/procedural assertions raised in the defense motions; and
- In light of the draconian nature of the relief defendants' request -- dismissal of Encompass's claims -- Encompass will be prejudiced if it is not permitted to explore fully each of the challenges raised in the defendants' joint motions to dismiss in a single, comprehensive and concise memorandum.

For all of the foregoing reasons, Encompass respectfully requests that the Court grant Encompass leave to a single Opposition and Memorandum of Reasons in Support of Opposition to defendants' motions to dismiss not to exceed forty-five (45) pages.

IV. CERTIFICATION

Undersigned counsel certifies pursuant to Local Rule 7.1(A)(2) that the parties have conferred in good faith and that all moving and opposing parties assent to the relief requested herein.

Respectfully Submitted
Encompass Insurance Company,
By its Attorneys,

/s/ Nathan A. Tilden

Richard D. King, Jr., BBO No. 638142
Nathan A. Tilden, BBO No. 647076
SMITH & BRINK, P.C.
122 Quincy Shore Drive
Quincy, MA 02171
Tel: (617) 770-2214

Dated: October 21, 2005